

SENATE BILL No. 302

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-8.

Synopsis: Expungement of arrest and conviction records. Allows a sentencing court to expunge the arrest and conviction records of an individual who committed a felony before the individual became 25 years of age if 20 years have passed since the completion of: (1) the individual's sentence; and (2) any other obligations imposed on the individual as a part of the sentence.

Effective: July 1, 2005.

Clark

January 6, 2005, read first time and referred to Committee on Judiciary.

C
o
p
y



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 302

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 8. Expungement of Conviction Records

Sec. 1. This chapter applies to all records, including juvenile records, created as a result of allegations that an individual committed a felony before the individual became twenty-five (25) years of age.

Sec. 2. After the elapse of twenty (20) years after the last date an individual completes the individual's sentence and any other obligations imposed on the individual as a part of the sentence, the individual may petition the sentencing court at any time to remove from:

- (1) a court's files;**
- (2) the files of law enforcement agencies;**
- (3) the files of the department of correction; and**
- (4) the files of any other individual who has provided**



C
o
p
y

1 treatment or services to the individual under a court order;
 2 the records pertaining to the individual's involvement in criminal
 3 or juvenile court proceedings.

4 **Sec. 3.** In considering whether to grant an expungement petition
 5 under this chapter, the court may review any of the following:

- 6 (1) Whether the individual has been rehabilitated to the
 7 court's satisfaction.
- 8 (2) Any other mitigating factors, including the following:
 - 9 (A) Job performance.
 - 10 (B) Job retention.
 - 11 (C) Community service.
 - 12 (D) Fulfillment of family and child support obligations.
 - 13 (E) Completion of restitution to the victim.

14 **Sec. 4.** The court may not grant the expungement petition if the
 15 individual has been convicted of:

- 16 (1) any felony; or
- 17 (2) a Class A misdemeanor;

18 that the individual committed on or after the date the individual
 19 became twenty-five (25) years of age.

20 **Sec. 5.** If the court grants the expungement petition of an
 21 individual under this chapter, the court shall do the following:

- 22 (1) Order each law enforcement agency and each individual
 23 who:

- 24 (A) incarcerated;
- 25 (B) provided treatment for; or
- 26 (C) provided other services for;

27 the individual under an order of the court, including the
 28 department of correction, to send the individual's records to
 29 the court.

- 30 (2) Order any state, regional, or local central repository for
 31 criminal history information to send the individual's records
 32 to the court.

- 33 (3) Seal any court records related to the allegation and any
 34 proceeding related to the allegation.

- 35 (4) Notify the clerk of the supreme court to seal any records
 36 in the clerk's possession concerning the allegation or any
 37 proceeding related to the allegation, if an appeal was taken.

38 **Sec. 6.** If the expungement petition of an individual is granted
 39 under this chapter, information concerning the individual's arrest
 40 or conviction may not be placed or retained in any:

- 41 (1) state central repository for criminal history information;
 42 or

**C
o
p
y**



(2) other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency.

Sec. 7. If an expungement petition is granted under this chapter, the records of:

- (1) the sentencing court;
- (2) a juvenile court;
- (3) a court of appeals; and
- (4) the supreme court;

shall be permanently sealed. Other records may be destroyed or given to the individual to whom the records pertain.

Sec. 8. (a) If an individual whose records are expunged under this chapter brings an action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(b) For the plaintiff to recover in an action described in subsection (a), the plaintiff must show that the contents of the expunged records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be required to state under oath whether:

- (1) the plaintiff had records in the criminal justice system; and
- (2) those records were expunged.

(d) If the plaintiff denies the existence of the records in an action described in subsection (a), the defendant may prove the existence of the records in any manner compatible with the law of evidence.

Sec. 9. After a court orders an individual's records to be expunged under this chapter, the individual shall be treated for all purposes as if the individual had not been arrested or convicted of the expunged felony.

SECTION 2. [EFFECTIVE JULY 1, 2005] IC 35-38-8, as added by this act, applies to all felonies regardless of whether the offense was committed on, before, or after July 1, 2005.

**C
O
P
Y**

